



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 4088

2 AMENDMENT NO. _____. Amend House Bill 4088 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Illinois Accurate Government Records Act.

6 Section 5. Findings. The General Assembly makes the
7 following findings:

8 (1) The right to privacy is being threatened by the
9 indiscriminate collection, maintenance, and dissemination
10 of personal information and the lack of effective laws and
11 legal remedies.

12 (2) The increasing use of computers and other
13 sophisticated information technology has greatly magnified
14 the potential risk to individual privacy that can occur
15 from the maintenance of personal information.

16 (3) In order to protect the privacy of individuals, it

1 is necessary that the maintenance and dissemination of
2 personal information be subject to strict limits.

3 Section 10. Definitions. For purposes of this Act:

4 "Agency" means any State agency or local agency.

5 "Individual" means a natural person.

6 "Local agency" means any municipality, unit of local
7 government, county, school district, special purpose district,
8 or township of the State or any elected officer or board,
9 bureau, commission, department, division, institution, or
10 instrumentality thereof.

11 "Maintain" means to maintain, collect, use, or
12 disseminate.

13 "Personal record" includes, but is not limited to, the
14 following information about an individual that is maintained by
15 an agency: the individual's education, financial, medical, or
16 employment history, or items that contain or make reference to
17 the individual's name, identifying number, symbol, or other
18 identifying particular assigned to the individual, such as a
19 finger or voice print or a photograph. "Personal record" does
20 not include any record under the Personnel Record Review Act or
21 the School Student Record Act.

22 "Routine use" means, with respect to the disclosure of a
23 record, the use of the record for a purpose that is compatible
24 with the purpose for which it was collected.

25 "State agency" means the office of any elected State

1 officer and any agency, board, commission, department,
2 division, or educational institution of the State.

3 "System of records" means a group of any records under the
4 control of any agency from which information is retrieved by
5 the name of the individual or by some identifying number,
6 symbol, or other identifying particular assigned to that
7 individual.

8 Section 15. Access to an individual's personal records.

9 (a) Upon the request of an individual to gain access to the
10 individual's personal record, an agency shall permit the
11 individual to review the record and have a copy made within 10
12 working days after the date of receipt of the request by the
13 agency, unless the personal record requested is exempted under
14 subsection (c) to this Section. The 10-day period may be
15 extended for an additional 20 working days if the agency
16 provides to the individual, within the initial 10 working days,
17 a written explanation of unusual circumstances causing the
18 delay.

19 (b) Each agency that maintains any accessible personal
20 record shall make that record available to the individual to
21 whom it pertains in a reasonably intelligible form. Where
22 necessary the agency shall provide a translation into common
23 terms of any machine readable code or any code or abbreviation
24 employed for internal agency use.

25 (c) An agency is not required under this Section to grant

1 an individual access to personal records or information in
2 records:

3 (1) Maintained by an agency that performs as its or as
4 a principal function any activity pertaining to the
5 prevention, control, or reduction of crime, including, but
6 not limited to, State and local police departments, and
7 which consist of:

8 (A) information or reports prepared or compiled
9 for the purpose of criminal intelligence or of a
10 criminal investigation, including reports of
11 informers, witnesses, and investigators; or

12 (B) reports prepared or compiled at any stage of
13 the process of enforcement of the criminal laws from
14 arrest or indictment through confinement, correctional
15 supervision, and release from supervision.

16 (2) The disclosure of which would reveal the identity
17 of a source who furnished information to the agency under
18 an express or implied promise of confidentiality.

19 (3) Consisting of testing or examination material or
20 scoring keys used solely to determine individual
21 qualifications for appointment or promotion in public
22 employment, or used as or to administer a licensing
23 examination or an academic examination, the disclosure of
24 which would compromise the objectivity, fairness, or
25 effectiveness of the testing or examination process.

26 (4) Including investigative reports and materials,

1 related to an upcoming, ongoing, or pending civil or
2 criminal action or administrative proceeding against the
3 individual.

4 (5) Required to be withheld from the individual to whom
5 it pertains by statute or judicial decision or authorized
6 to be so withheld by constitutional or statutory privilege.

7 (d) Nothing in this Section shall be construed to permit or
8 require an agency to withhold or deny access to a personal
9 record or any information in a personal record where any
10 statute, administrative rule, rule of court, judicial
11 decision, or other law authorizes or allows an individual to
12 gain access to a personal record or to any information in a
13 personal record or requires that the individual be given such
14 access.

15 (e) For the State of Illinois, or a municipality having a
16 population of 500,000 or more, or a county having a population
17 of 3,000,000 or more, each department of the State,
18 municipality, or county is a separate agency for purposes of
19 this Section, and an individual's request to one department for
20 access to his or her personal records shall not oblige that
21 department to seek out any personal records of another
22 department.

23 Section 20. Changes to an individual's personal records.

24 (a) Each agency shall permit an individual, after
25 inspection, to request in writing a change to his or her

1 personal record, and shall within 30 days after the date of
2 receipt of such request:

3 (1) make each change in accordance with the
4 individual's request of any portion of a personal record
5 that the individual believes is not accurate, relevant,
6 timely, or complete and inform the individual of the
7 changes made in accordance with his or her request; or

8 (2) inform the individual of its decision not to change
9 the personal record in accordance with such individual's
10 request, the reason for the decision, the procedures
11 established by the agency for the individual to request a
12 review by the head of the agency or an official
13 specifically designated by the head of the agency of the
14 decision not to make the change, and the name, title, and
15 business address of the reviewing official.

16 (b) Each agency shall permit any individual who disagrees
17 with the decision of the agency not to make the change to a
18 personal record to request a review of such decision by the
19 head of the agency or an official specifically designated by
20 the head of the agency, and, not later than 30 days after the
21 date on which the individual requests such review, complete the
22 review and make a final determination unless, for good cause
23 shown, the head of the agency extends the review period by 30
24 days.

25 (c) If, after review, the reviewing official decides not to
26 change the personal record in accordance with the request, the

1 agency shall permit the individual to file with the agency a
2 statement of no more than 1,500 words setting forth the reasons
3 for the individual's disagreement.

4 (d) If the agency discloses to any person the portion of
5 the record for which the individual has filed a statement of
6 disagreement under subsection (c) of this Section, then the
7 agency shall clearly note in the record that a statement has
8 been filed and, upon request, make a copy of the statement
9 available. The agency may provide a concise statement of the
10 reasons of the agency for not changing the record.

11 Section 25. Limitations on an agency's disclosure of an
12 individual's personal records. No agency shall disclose any
13 personal record by any means of communication to any person, or
14 to another agency, except pursuant to a written request by, or
15 with the prior written consent of, the individual to whom the
16 record pertains, unless disclosure of the record would be:

17 (1) to those officers and employees of the agency that
18 maintains the record who have a need for the record in the
19 performance of their duties;

20 (2) pursuant to and to the extent required by the
21 Freedom of Information Act;

22 (3) for a routine use;

23 (4) to a recipient who has provided the agency with
24 advance adequate written assurance that the record will be
25 used solely as a statistical research or reporting record,

1 and the record is to be transferred in a form that is not
2 individually identifiable;

3 (5) to the State archives as a record that has
4 sufficient historical or other value to warrant its
5 continued preservation;

6 (6) to another agency or to an instrumentality of any
7 governmental jurisdiction within or under the control of
8 the United States for a civil or criminal law enforcement
9 activity if the activity is authorized by law, and if the
10 head of the agency or instrumentality has made a written
11 request to the agency which maintains the record specifying
12 the particular portion desired and the law enforcement
13 activity for which the record is sought;

14 (7) to a person pursuant to a showing of compelling
15 circumstances affecting the health or safety of an
16 individual if upon such disclosure notification is
17 transmitted to the last known address of the individual;

18 (8) to either chamber of the General Assembly, or, to
19 the extent of matter within its jurisdiction, any committee
20 or subcommittee of the General Assembly;

21 (9) to either the Comptroller or the Auditor General,
22 or any of his or her authorized representatives, in the
23 course of the performance of his or her duties;

24 (10) pursuant to the order of a court of competent
25 jurisdiction; or

26 (11) to a consumer reporting agency as permitted or

1 allowed by federal or State statute.

2 Section 30. Limitations on an agency's maintenance of
3 systems of personal records. Each agency that maintains a
4 system of records shall do all of the following:

5 (1) Maintain in its personal records only the
6 information about an individual that is relevant and
7 necessary to accomplish a purpose of the agency that is
8 required or authorized by the Illinois Constitution or
9 statute or mandated by the federal government.

10 (2) Collect information to the greatest extent
11 practicable directly from the subject individual when the
12 information may result in adverse determinations about an
13 individual's rights, benefits, and privileges under State
14 programs.

15 (3) Post upon establishment or revision a notice of the
16 existence and character of the system of records, which
17 notice shall include the following:

18 (A) the name and location of the system;

19 (B) the categories of individuals on whom records
20 are maintained in the system;

21 (C) the categories of records maintained in the
22 system;

23 (D) each routine use of the records contained in
24 the system, including the categories of users and the
25 purpose of such use;

1 (E) the policies and practices of the agency
2 regarding storage, retrievability, access controls,
3 retention, and disposal of the records;

4 (F) the title and business address of the agency
5 official who is responsible for the system of records;

6 (G) the agency procedures whereby an individual
7 can be notified at his or her request if the system of
8 records contains a record pertaining to him or her;

9 (H) the agency procedures whereby an individual
10 can be notified at his or her request how he or she can
11 gain access to any record pertaining to him or her
12 contained in the system of records, and how he or she
13 may contest its content; and

14 (I) the categories of sources of records in the
15 system.

16 (4) Maintain all records that are used by the agency in
17 making any determination about any individual with
18 accuracy, relevance, timeliness, and completeness as is
19 reasonably necessary to ensure fairness to the individual
20 in the determination.

21 (5) Prior to disseminating any record about an
22 individual to any person other than an agency, unless the
23 dissemination is made pursuant to the Freedom of
24 Information Act, make reasonable efforts to ensure that the
25 records are accurate, complete, timely, and relevant for
26 agency purposes.

1 (6) Establish rules of conduct for persons involved in
2 the design, development, operation, disclosure, or
3 maintenance of records containing personal information and
4 instruct each person with respect to such rules and the
5 requirements of this Act, including any other rules and
6 procedures adopted pursuant to this Act, and the remedies
7 and penalties for noncompliance.

8 (7) Establish appropriate and reasonable
9 administrative, technical, and physical safeguards to
10 ensure compliance with the provisions of this Act, to
11 ensure the security and confidentiality of records, and to
12 protect against anticipated threats or hazards to their
13 security or integrity that could result in any injury.

14 Section 35. Limitations on an agency's maintenance of an
15 individual's personal records. An agency shall maintain no
16 personal record, whether or not the personal record is part of
17 a system of records, describing how any individual exercises
18 rights guaranteed by the First Amendment to the United States
19 Constitution or Sections 3, 4, or 5 of Article I of the
20 Illinois Constitution, unless expressly authorized by statute
21 or by the individual about whom the record is maintained or
22 unless pertinent to and within the scope of an authorized law
23 enforcement activity.

24 Section 40. Civil remedies.

1 (a) An individual may bring a civil action against an
2 agency in a circuit court of the State whenever an agency fails
3 to comply with any provision of this Act, and after appropriate
4 administrative remedies have been exhausted.

5 (b) In any action brought by an individual under this
6 Section, the court may:

7 (1) order the agency to disclose, correct, or amend the
8 individual's personal record;

9 (2) issue an injunction to require any other agency
10 action, or to enjoin the agency from improper actions, as
11 the court may deem necessary and appropriate to render
12 substantial relief; and

13 (3) order the agency to pay the individual all or a
14 portion of the costs of maintaining the action, including
15 reasonable attorney's fees, in any case in which the
16 individual has prevailed.

17 (c) In any action brought by an individual under this
18 Section in which the court determines that the agency knowingly
19 or intentionally violated a provision of this Act, the agency
20 shall be liable to the individual in an amount equal to the sum
21 of:

22 (1) actual damages sustained by the individual as a
23 result of the failure of the agency to properly maintain
24 the personal record, but in no case shall an individual
25 entitled to recovery receive less than the sum of \$1,000;
26 and

1 (2) the costs of the action together with reasonable
2 attorney's fees as determined by the court.

3 (d) An action may be brought against a State agency in the
4 circuit court for the county where the State agency has its
5 principal office or where the complainant resides. An action
6 may be brought against a local agency in the circuit court for
7 the county where the local agency is located. No action shall
8 be brought later than 2 years after notification of the agency
9 denial or, where applicable, the date of receipt of the final
10 determination of the office of information practices.

11 (e) The rights and remedies set forth in this Act shall be
12 deemed to be nonexclusive and are in addition to all those
13 rights and remedies that are otherwise available under any
14 other provision of law.

15 (f) Notwithstanding any other provision of this Act, no
16 fees, costs, or damages may be assessed against an agency for a
17 violation of Section 25 of this Act arising from the agency's
18 disclosure of records pursuant to the Freedom of Information
19 Act, unless the plaintiff can prove that the agency did not
20 have an objectively reasonable basis in law or in fact to
21 conclude that such disclosure was required by the Freedom of
22 Information Act.

23 (g) If an individual brings any action under this Section
24 that is not well grounded in fact, or is not warranted by
25 existing law or a good-faith argument for the extension,
26 modification, or reversal of existing law, then the court may

1 impose an appropriate sanction upon the individual, which may
2 include an order to pay the agency the amount of reasonable
3 expenses incurred because of the filing of the action,
4 including reasonable attorney fees.

5 (h) For civil actions alleging violation of items (1) or
6 (4) of Section 30 or Section 35 of this Act, the administrative
7 exhaustion required by subsection (a) of this Section shall
8 include the individual notifying the agency of the precise
9 information in the personal record to which the individual
10 objects, and the agency having an opportunity to decide whether
11 to remove or amend the disputed information.

12 Section 45. Agency responsibilities. Each agency shall:
13 (1) issue instructions and guidelines necessary to effectuate
14 this Act; and (2) take steps to ensure that all its employees
15 and officers responsible for the collection, maintenance, use,
16 and dissemination of personal records are informed of the
17 requirements of this Act.

18 Section 50. Attorney General responsibilities. The Office
19 of the Attorney General of Illinois:

20 (1) shall biennially submit to the Speaker of the House
21 of Representatives and the President of the Senate a
22 report:

23 (A) describing the actions of the Attorney General
24 pursuant to this Section during the preceding 2 years;

1 (B) describing the exercise of individual rights
2 of access and amendment under this Section during those
3 years;

4 (C) identifying changes in or additions to systems
5 of records; and

6 (D) containing such other information concerning
7 administration of this Section as may be necessary or
8 useful to the General Assembly in reviewing the
9 effectiveness of this Section in carrying out the
10 purposes of this Act;

11 (2) may, upon request by any person, provide advisory
12 opinions or other information regarding that person's
13 rights and the functions and responsibilities of agencies
14 under this Act; and

15 (3) shall receive complaints from and actively solicit
16 the comments of the public regarding the implementation of
17 this Act.

18 Section 55. Government contractors. If an agency provides
19 by a contract for the operation by or on behalf of the agency
20 of a system of records to accomplish an agency function, then
21 the agency shall, consistent with its authority, cause the
22 requirements of this Section to be applied to that system.

23 Section 60. Rights of legal guardians. For the purposes of
24 this Section, the parent of any minor, or the legal guardian of

1 any individual who has been declared to be incompetent due to
2 physical or mental incapacity or age by a court of competent
3 jurisdiction, may act on behalf of the individual.".